BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNION SCHOOL DISTRICT.	OAH CASE NO. 2014040519

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California on April 8, 2014, naming Panama-Buena Vista Union School District. The timelines in this matter were reset on May 9, 2014 because Student's parent did not attend the required resolution session, and this matter was continued for good cause on June 20, 2014.

Administrative Law Judge Alexa J. Hohensee heard this matter in Bakersfield, California on August 25-27, 2014.

Nicole Hodge Amey, Attorney at Law, represented Student. Gloria Zepeda, advocate, assisted Ms. Amey. Parent attended the hearing on behalf of Student.

Darren J. Bogié, Attorney at Law, represented District. Rita Pierucci, District's director of special education, attended the hearing on behalf of District. Nancy Gordon, a special education coordinator for District, attended the hearing on behalf of District on August 26 and 27, 2014, after giving testimony.

At the close of the hearing, a continuance to September 9, 2014, was granted for filing of written closing arguments. On that day, the briefs were timely filed, the record was closed, and the matter was submitted for decision.

ISSUES[1]

1. Did District deny Student a free appropriate public education in the individualized education program dated March 20, 2014, by:

a. Predetermining that Student would not be offered individualized services and an in-home placement (also referred to as "home hospital instruction") due to a psychological condition;

b. Failing to timely notify Parent of the information required for the IEP team to consider and recommend home hospital instruction; and

c. Failing to offer Student home hospital instruction? [2]

SUMMARY OF DECISION

Student did not meet his burden of persuasion on any of the issues presented. The weight of the evidence established that District IEP team members did not predetermine whether District would offer home hospital instruction to Student at the March 20, 2014 IEP team meeting, and that District timely notified Parent of all information required for the IEP team to consider an offer of home hospital instruction to a special education student. The weight of the evidence also established that Parent had an opportunity to meaningfully participate in the development of Student's March 20, 2014 IEP, and that any delay in Student receiving an offer of home hospital instruction was the result of Parent's conduct, and not the actions of District. The weight of the evidence also failed to establish that Student required a restrictive in-home placement to meet his unique educational needs, or that Student had complied with the statutory requirements for a recommendation of in-home instruction. All of Student's requests for relief are denied.

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[1] The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School District* (9th Cir. 2010) 626 F.3d 431, 442-443.)

[2] General education students may receive individual instruction in their home, a hospital or other health facility when a temporary disability that makes attendance in a regular program impossible or inadvisable. (Ed. Code, § 48206.3.) This service is different from individualized in-home placement and instruction under the IDEA for purposes of providing a FAPE to a child with disabilities. (34 C.F.R. 300.115(b)(1); Cal. Code Regs., tit. 5, § 3051.4(d).) Both types of in-home placements are commonly referred to as "home hospital instruction" when due to a temporary medical condition, but an in-home placement for a disabled child under the IDEA must continue to provide a FAPE.

FACTUAL FINDINGS

Jurisdiction and Background

1. Student was ten years old and entering fifth grade at the time of the hearing. Student was eligible for special education and related services under the eligibility categories of intellectual disability and speech impairment. Student was essentially non-verbal, and communicated with simple signs.

2. Student lived within the boundaries of the District at all times relevant to this proceeding.

The 2013-2014 School Year

3. During the 2013-2014 school year, Student attended McAuliffe Elementary School (McAuliffe) within District. Student's then-current IEP, dated February 15, 2013, called for placement in a special day class with 23 percent of his school day in general education and 40 minutes per week of speech and language services. The February 15, 2013 IEP included a behavior support plan that addressed Student's maladaptive behavior of inappropriately touching his peers, exhibited as hitting, kicking, hugging too hard, and bumping or jostling peers in line.

4. At McAuliffe, Student was placed in Pamela Powell's moderate/severe fourth-to-sixth-grade special day class. Ms. Powell has a moderate/severe teaching credential and has taught students with moderate to severe disabilities for nine years. Ms. Powell worked with Student on a daily basis from August 2013 through January 2014, and was knowledgeable concerning Student's abilities, academic performance and classroom behaviors. She exhibited good recall of events at the IEP team meetings she attended for Student and her testimony was thoughtful and thorough. Ms. Powell's testimony concerning Student's levels of performance and educational needs, and concerning the events of the IEP team meetings in February and March 2014, were given great weight.

5. Ms. Powell observed that Student appeared happy at school, was sociable, and enjoyed meeting new peers. Student's inappropriate touching behaviors were greatly reduced during his time in Ms. Powell's classroom; however, Student began to resist transitioning from preferred to non-preferred tasks by sitting down or "plopping," both in the classroom and on the playground. In preparation for Student's annual IEP review due in February 2014, Ms. Powell worked with school psychologist, Evan Dillingham, to write social/emotional goals to address Student's noncompliance and to revise Student's behavior support plan.

6. Mr. Dillingham is a highly qualified school psychologist with experience working with students who have behavioral difficulties and emotional disabilities. Mr. Dillingham is trained to work with students with a number of anxiety based behaviors. His duties at McAuliffe included observing students with behavior intervention plans, and he

generally spent at least one hour per week, usually longer, in Ms. Powell's classroom. Mr. Dillingham observed Student prior to helping develop Student's February 2013 and February 2014 behavior support plans and during his weekly observations of Ms. Powell's classroom. Mr. Dillingham was familiar with Student, and exhibited good recall of events surrounding the IEP team meetings he attended. Mr. Dillingham was forthcoming about being unclear on details surrounding the scheduling of the January 2014 IEP team meeting, and displayed some confusion when questioned regarding the timing of a placement offer, but these points did not adversely affect his credibility regarding his observations or opinions regarding Student's educational needs. Mr. Dillingham's testimony regarding his observations of Student, Student's behavioral progress and needs, the programs that would address Student's needs and events at the IEP team meetings was persuasive and given great weight.

7. On Wednesday, January 15, 2014, Student was involved in an alleged incident with an aide in Ms. Powell's classroom.[3] Later that afternoon, on January 15, 2014, District's special education coordinator, Nancy Gordon, arranged an IEP team meeting with Parent and school staff. The meeting was scheduled for 7:45 a.m. on Tuesday, January 21, 2014.

8. Monday, January 20, 2014, was a State holiday and District schools were closed. That morning, Parent faxed a letter to the superintendent of District that acknowledged an IEP team meeting had been arranged to discuss "options" that included assignment of a different aide to work with Student or transferring Student to a different school. Parent indicated that she would not agree to move Student to another school, and she would not discuss Student's return to school, unless the current aide was removed, Student was assigned his own aide and cameras were placed in all special education classrooms within District. Parent wrote that Student was traumatized, and could not receive an appropriate education while "being abused" and "scared to death" of the aide in Ms. Powell's classroom. Parent requested that another IEP team meeting not be scheduled until she had been provided with all of Student's educational records, and that District provide "independent home study, where someone comes to [Student's] home and works with him and provides him all his related services."

9. Because District schools were closed on January 20, 2014, nobody was in the superintendent's office to forward Parent's fax to McAuliffe. District team members were unaware that Parent would not attend the scheduled meeting, and assembled at 7:45 a.m. on Tuesday, January 21, 2014. The meeting was subsequently canceled when McAuliffe staff was informed that Parent would not attend.

10. Instead of attending the meeting, on January 21, 2014, Parent took Student to his pediatrician, and obtained a doctor's note that excused Student from school "due to injuries" until the following Monday, January 27, 2014.

[3] Neither the exact nature of the incident, nor whether it had actually occurred, were issues in this due process proceeding.

11. On January 24, 2014, Ms. Gordon responded to Parent's faxed letter and offered to schedule an IEP team meeting for January 27 or 28, 2014, or another mutually agreeable date.

12. Student did not return to school on January 27, 2014, and remained at home.

13. On February 3, 2014, Parent wrote to McAuliffe's principal, Dan Pokett, to arrange to pick up homework packets from Ms. Powell, and to reiterate her request for independent home study with related services. Parent then communicated directly with Ms. Powell regarding Student's homework.

14. An IEP team meeting was scheduled for Friday, February 14, 2014 to discuss a request by Parent for "home/hospital instruction" and as Student's annual IEP review. District IEP team members Ms. Powell, Mr. Dillingham, Mr. Pokett and Ms. Gordon met before the meeting to discuss Student's educational needs and a variety of program options that might meet those needs. Although they wanted to see Student back in school, they did not determine that Student would only be offered a school-based program, and maintained open minds regarding Parent's home hospital request.

15. On February 14, 2014, District convened the scheduled IEP team meeting, attended by Parent, Ms. Powell, Mr. Dillingham, Mr. Pokett, Ms. Gordon, Student's speech and language pathologist Ambika Thampi, school nurse Stacy Mabry, and Student's general education teacher and another special education coordinator.

16. Parent informed the team that she was only available for an hour. During that time, the team discussed Student's present levels of performance and progress on goals. In terms of Student's social/emotional functioning, various team members reported that Student always had a smile on his face, liked to participate in classroom and sport activities, always tried and was well liked by his peers.

17. Ms. Thampi informed the team about Student's progress on his speech and language goals. She reported that Student was making good progress, and was excited about going to speech therapy sessions. Ms. Thampi was familiar with Student after providing him with speech therapy two times each week for 25 minutes from September 2013 through January 15, 2014. Ms. Thampi testified at hearing. Her demeanor was sincere, and she testified persuasively that she worked well with Student. As an IEP team member, she wanted information on any anxiety disorder suffered by Student so that she could take into account his diagnosis when working on, and developing, speech and language goals. For example, it would be important to know if Student could not work in a group, or if there were topics that would upset him.

18. The February 14, 2014 IEP team meeting lasted approximately 45 minutes. During the meeting, Parent requested that Student be placed on home hospital instruction because he was suffering from post-traumatic stress disorder. Ms. Gordon provided Parent with a Home and Hospital Instruction Request and Application (home hospital request), a

release of medical information form (release of information), a form that requested information on medications that affected Student during the school day and a "special considerations" form that invited doctors to provide additional information to assist the IEP in developing a student's educational plan. Ms. Gordon requested that Parent contact her if she had any questions regarding the process for requesting home hospital instruction.

19. District's home hospital request form was in two parts: the top half was to be completed and signed by the parent, and the bottom half was to be completed by a doctor or mental health professional. The bottom half of the form read, in pertinent part:

> To be completed by Physician/Hospital/Agency (or information can be typed on letterhead, signed, and attached):
>
> Note: Home Hospital Instruction applies to students incurring a physical/mental/emotional disability after which they are expected to return to *regular classes* without special intervention. . . .
>
> Length of recommended Home Hospital Instruction (Dates): From ___ to ___.
>
> Verification of attending professional (Physician/Mental Health Professional)
>
> I verify that the student's disabling condition necessitates HHI and has made attendance in a *regular school program* impossible or inadvisable. . . .
>
> Print Name of Doctor/Mental Health Professional (Italics added.)

District designed the home hospital request form to be used for general education students. This form, when properly completed, was sufficient to temporarily place a general education student – that is, a student in "regular classes" and a "regular school program" -- on home hospital instruction. District did not consider this form sufficient to determine whether "home" was an appropriate placement for purposes of providing a FAPE in the least restrictive environment for purposes of special education law.

20. Parent did not contact Ms. Gordon to obtain any further information concerning the documents she had been given by District to request home hospital instruction for Student.

21. Ms. Gordon has a bachelor's of science degree in nursing and is a registered nurse. She was a school district nurse for 19 years, and has been an administrator at District for four years. Ms. Gordon displayed excellent recall concerning the events of the IEP team meetings she attended, and her attempts to work with Parent to gather the information necessary for the IEP team to consider home hospital instruction for Student. Her testimony regarding the use of general education forms in conjunction with additional information to gather information for special education program decisions was particularly logical and enlightening. Ms. Gordon explained that there are many District forms that work as well for

general education students as for special education students, but some forms do not. Forms seeking a change in services or placement might be self-sufficient with regard to a general education student, but a change to the program of a special education student must be made by an IEP team, and the team might require more information. For example, the forms requesting retention, school choice, and home hospital instruction are self-sufficient in providing the information necessary for District to make a determination on requests regarding general education students, but an IEP team needs additional information to appropriately and meaningfully assess a request for a special education student to be retained, change schools, or transition to a home-based program. In her role as a special education coordinator, it was Ms. Gordon's practice to assist parents in understanding the information requirements for changes in the placement or program for a child with special needs, and when a medical condition impacted a student's access to education, she worked with parents and physicians to explain why and how the District provides a continuity of services for those students. Ms. Gordon's testimony was credible and persuasive, and given great weight.

22. The Monday following the IEP team meeting, February 17, 2014, was a school holiday, and Parent took Student to see Edwards D. Bright. Mr. Bright signed a home hospital request, and filled in the blanks to state that Student had been diagnosed with a physical/mental/emotional disability on February 17, 2014, and to recommend home hospital instruction from "current to [September] 2014." Mr. Bright did not testify at the hearing, but Parent understood Mr. Bright to be a psychiatric nurse. A stamp on the form indicated that Mr. Bright was an MSN, FNP, commonly understood to mean that he possessed a master's of science in nursing as a family nurse practitioner. His name was handwritten on the form as "E.D. Bright FNP/Psychiatry."

23. On Tuesday, February 18, 2014, the next school day after the IEP team meeting, McAuliffe's school nurse, Stacy Mabry, drafted a written response to Parent's home hospital request. Ms. Mabry's letter asked Parent to have Student's physician provide a completed home hospital request and a release of information. The letter also explained, in highlighted language, that for special education students the California Code of Regulations required that Student's physician provide a written statement with a diagnosis, and certification that the severity of the condition prevented the pupil from attending a less restrictive placement. A copy of California Code of Regulations, title 5, sections 3042, 3051.4 and 3051.17, was enclosed with Ms. Mabry's letter, along with blank home hospital request and release of information forms. Ms. Mabry informed Parent that once the "physician's order for HHI" was received, an IEP team meeting would be scheduled to discuss home hospital instruction for Student. The letter was mailed on February 20, 2014. Ms. Mabry's intention in sending the February 18, 2014 letter to Parent was to inform Parent of the information required by the IEP team to assess Student's request for home hospital instruction.

24. Parent did not contact Ms. Mabry to clarify how to complete a home hospital request, whether the release of medical information or other documents provided by

Ms. Mabry or Ms. Gordon were necessary, or what type of statement was required by a physician or psychologist.

25. Ms. Mabry has been a registered nurse for 18 years, a school nurse for 17 years, and has been with District for 12 years. At hearing, Ms. Mabry appeared genuinely concerned about Student, and all of her students, both in special education and general education. Her recall of the events of the IEP team meetings she attended was good, and her demeanor as a witness was patient and helpful, particularly in explaining District's requirements for considering home hospital instruction for a student with special needs. Ms. Mabry's testimony was credible and given great weight. Ms. Mabry's testimony was particularly persuasive that, had Mother contacted her for clarification, she gladly would have explained the need for the information requested in her letter, and which documents were required and which were simply beneficial to IEP team.

26. Prior to March 3, 2014, Parent retained attorney Nicole Hodge Amey to represent Student. Ty Amey is an advocate who works with Ms. Amey. On March 5, 2014, Ty Amey faxed the home hospital request completed by Parent and Mr. Bright to District, and requested that an IEP team meeting be scheduled to review the request.

27. District scheduled an IEP team meeting for March 20, 2014. Prior to that date, Ms. Gordon phoned and wrote to Parent several times to advise Parent that the home hospital instruction request completed by Mr. Bright was insufficient and to reiterate the need for the information requested in Ms. Mabry's letter.

28. The District IEP team members anticipated that Parent would provide additional information to support Student's home hospital request prior to, or at, the meeting, and maintained open minds regarding home hospital instruction for Student. Parent did not provide any additional documentation to District prior to March 20, 2014, and did not bring additional information to the March 20, 2014 IEP team meeting.

MARCH 20, 2014 IEP TEAM MEETING

29. On March 20, 2014, District convened an IEP team meeting attended by all of the team members who had attended the February 14, 2014 IEP team. In addition, Student's attorney Nicole Hodge Amey attended by telephone until 9:07 a.m., at which time advocate Ty Amey joined the meeting by telephone in Ms. Amey's stead. District's attorney, Darren Bogié, also attended the meeting.

30. The meeting lasted for approximately an hour and a half. After the team reviewed Student's progress on goals, proposed goals, the proposed behavior support plan, and State testing results, the discussion turned to Student's placement. The District team members reviewed a continuum of options for Student's placement, including continued placement in a moderate/severe special day class at McAuliffe or another school site, and home hospital instruction. Parent was only amenable to home hospital instruction and kept turning the discussion away from other programs and placements.

31. District IEP team members explained that in-home placement was very restrictive, and that California regulations required that the IEP team review the information requested in Ms. Mabry's February 18, 2014 letter prior to recommending in-home placement. Parent was unwilling to execute the release of information citing privacy concerns, and was uncomfortable discussing Student's medical information. Ms. Mabry and Ms. Gordon explained that the release was not required, but was provided as a courtesy that would allow Ms. Mabry to contact Student's psychologist and obtain a diagnosis and information on Student's condition to enable the team to make an informed decision regarding an educational setting that met Student's needs. Ms. Mabry relayed to Parent that in her experience, parents usually appreciated having the school nurse contact a physician for the requisite information, saving parents the time and trouble. The District team members offered to bring Mr. Bright into the March 20, 2014 IEP team meeting by telephone to provide the information needed, but Parent declined. The District team members then offered to have Parent go into a private room with Ms. Mabry, and with Mr. Amey and Mr. Bright on the telephone, to obtain the necessary information but Parent again declined. Parent became emotional, and the IEP team took a break for Parent to speak with Mr. Amey in private, after which Parent returned to the meeting and was much calmer. Mr. Amey requested that the meeting adjourn to give Parent time to obtain further information in support of the home hospital request, and that the team refrains from making a placement offer until the meeting was reconvened. The meeting adjourned, and District team members understood that the meeting would be reconvened within a few days.

32. The District team members would have considered placing Student on individualized in-home instruction at the March 20, 2014 IEP team meeting if Parent had provided the requisite information at that meeting.

33. Although the District team members who testified characterized the March 20, 2014 IEP team meeting as congenial, Parent testified that she felt the District team members were attempting to "bully" her into signing a release of information. She referred to the District team members' explanation of the information needed as "jibber jabber," and generally could not recall the events surrounding Student's home hospital request or her interactions with District staff. Much of Parent's testimony was tentative and lacked detail, and she appeared nervous and uncomfortable on the witness stand. It is understandable that a parent would be distressed, protective of her child and perhaps distrustful of District if she believed her child had suffered an injury while under District supervision, particularly when the child is non-verbal and intellectually disabled. However, Parent's hesitation and lack of recall when testifying was in sharp contrast to her fact-filled and assertive correspondence with District staff members at the time of the alleged incident. Even taking into account Parent's distress at the circumstances that culminated in a due process hearing, her tentative and vague responses adversely impacted her credibility. Due to Parent's dismissive attitude and superficial testimony regarding interactions with District staff, her testimony concerning these interactions was given less weight than that of the District witnesses.

34. At some point in time after March 20, 2014, Student was placed on home instruction with in-home speech and language services. Parent observed a regression in

Student's behavior and social skills after he was removed from school, and opined that Student needed routine and structure.

35. Edward Black, a credentialed special education teacher, provided Student with academic instruction in the home for four weeks in Summer 2014. He testified persuasively that Student worked well with him, and was making progress.

36. Jill Schamblin, a very well qualified and experienced speech and language pathologist, provided Student with speech therapy in the home during Summer 2014. She testified that Student was always eager to complete tasks, good at following directions, and interacted well with her.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA[4]

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.[5]; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic, and functional goals related to those needs, and a statement of

[4] Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

[5] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit," or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

Issue 1(a) – Predetermination

5. Student contends that District team members attended the March 20, 2014 IEP team meeting with closed minds and an arrangement to refuse to recommend home hospital instruction for Student, significantly impeding Parent's opportunity to participate in the development of Student's IEP. District disagrees, and argues that District team members

would have considered home hospital instruction had Parent provided the information necessary to support such a restrictive placement.

6. The parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings. (34 C.F.R. § 300.501(a) & (b) (2006); Ed. Code, §§ 56500.4, 56341, subd. (b), 56341.5, subds. (a) & (b).) The parents have meaningfully participated in the development of an IEP when they are informed of their child's problems, attend the IEP team meeting, express their disagreement with the IEP team's conclusions, and request revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693.) Parents who have an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, have participated in the IEP development process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

7. Predetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344.) A school district predetermines the child's program when it does not consider the parents' requests with an open mind, thereby denying their right to participate in the IEP process. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) School officials and staff can meet to review and discuss a child's evaluation and programming in advance of an IEP team meeting, and may arrive at an IEP team meeting with a pre-written offer, but may not take a "take it or leave it" position. (*J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10, citing *Ms. S v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131, superseded on other grounds by 20 U.S.C. § 1414(d)(1)(B) (*Vashon Island*).) The IDEA does not require a school district to accept parents' choice of program, but it must consider suitable alternatives. (See *Blackmon v. Springfield R-XII Sch. Dist.* (8th Cir. 1999) 198 F.3d 648, 658.)

8. In the event of a procedural violation, a denial of FAPE may only be found if that procedural violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE, or caused deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2).)

9. In this case, the weight of the evidence did not support Student's contention that District denied him a FAPE by predetermining the placement that would be offered at the March 20, 2014 IEP team meeting.

10. Mr. Dillingham, Ms. Thampi, Ms. Powell and Mr. Pokett, persuasively testified that they met to review and discuss Student's present levels, progress, proposed goals, proposed behavior supports and a variety of prospective services and placement options, but did not decide on one placement for Student. Such review and discussion in advance of an IEP team is permissible under *Vashon Island*, so long as the school district

team members do not exhibit a "take it or leave it" position with regard to Student's placement.

11. The weight of the evidence established that the District team members did not present only one "take it or leave it" placement option at the March 20, 2014 IEP team meeting, and were willing to consider other placements, including an in-home placement. Ms. Mabry and Ms. Gordon informed Parent, orally and in writing, of the information required to support home hospital instruction, which indicated a willingness to consider such placement. Both Ms. Mabry and Ms. Gordon made multiple offers to assist Parent in gathering the requisite information for that option. Ms. Mabry, Ms. Gordon, Mr. Dillingham, Ms. Thampi and Mr. Pokett testified that they would have considered a recommendation for home hospital instruction if Parent had submitted a diagnosis, a projected date of return to school, and a psychologist's certification that Student's condition prevented Student from attending a less restrictive placement. On this evidence, the District IEP team members were not only willing to consider home hospital instruction, but proactively assisted Parent in gathering the information needed for the IEP team to recommend such a placement.

12. To the extent Student argues that the District team members' insistence on receipt of information required by State regulations prior to recommending an in-home placement constituted a "take it or leave it" position, this argument fails. State regulations implementing the IDEA mandate that an IEP team *shall* have specific delineated information prior to recommending isolated home instruction for a pupil with special needs, including as applicable here, a medical report from the attending psychologist stating the diagnosed condition, projecting a date for return to school, and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement.[6] (Cal. Code Regs., tit. 5, § 3051.4, subd. (d).) The refusal of District team members to recommend an in-home placement without such information did not constitute a "take it or leave it" position, but a necessary and reasonable effort to comply with a regulatory mandate that on its face was intended to carry out the IDEA's policy of placement being in the least restrictive environment.

13. The weight of the evidence also established that Parent was afforded ample opportunity to participate the March 20, 2014 IEP team meeting. The January 21, 2014 IEP team meeting was arranged at Parent's request. When Parent did not appear, District canceled the meeting rather than proceed without Parent. Parent promptly received Student's educational records and at her request the February 14, 2014 meeting was scheduled to allow her time to review the records beforehand. Parent was present at the February meeting during the discussion of Student's present levels of performance, including his behavior and social emotional functioning, and the meeting was adjourned early to accommodate Parent's work schedule. Parent was supplied with a packet of home hospital request materials upon request at the February 14, 2014 meeting. Parent was given a second packet of materials, and a written explanation of the home hospital request process in Ms. Mabry's letter of

[6] The mandatory nature of California Code of Regulations, title 5, section 3051.4, subdivision (d), is discussed further in the analysis of Issue 1(b).

February 18, 2014. No later than March 3, 2014, Parent had the advice of experienced special education counsel and an advocate to assist her with Student's home hospital request. Parent was accompanied by Student's counsel and advocate at the March 20, 2014 IEP team meeting. The discussion of home hospital instruction at the March 20, 2014 IEP team meeting was long and in-depth, and included offers of alternative ways for Student to provide the information required for the team to consider Parent's preferred placement. The March 20, 2014 IEP team meeting was continued for a few days, and the placement offer deferred, at the request of Student's advocate to allow Parent time to gather the necessary information. This abundance of evidence demonstrated that District did not predetermine its placement offer and that Parent meaningfully participated in the development of Student's IEP.

14. Student failed to meet his burden of proving that District denied him a FAPE by predetermining not to offer home hospital instruction at the March 20, 2014 IEP team meeting.

Issue 1(b) – Timeliness of Notification to Parent

15. Student contends that as a result of District's failure to timely notify Parent of all regulatory requirements or that Student's home hospital request was incomplete, and its insistence on an unwarranted waiver of medical privacy, Parent's opportunity to participate in the development of Student's IEP was significantly impeded, which resulted in a denial of FAPE. Conversely, Student contends that District developed its "own standards" for in-home instruction that Parent had met, and District's last-minute insistence on compliance with a State regulation at the March 20, 2014 IEP team meeting significantly impeded Parent's opportunity to participate. District contends that Parent was timely advised of regulatory requirements for home instruction, and is unreasonably asserting confusion over the information requested. District argues that neither confusion nor partial compliance excuse District from compliance with a mandated State regulation.

16. When a pupil with exceptional needs experiences an acute health problem which results in non-attendance at school for more than five consecutive days, the school district shall assure that an IEP team meeting is convened to determine appropriate educational services. (Cal. Code Regs., tit. 5, section 3051.17, subd. (c).)

17. When developing each pupil's IEP, the IEP team shall consider the following: (1) the strengths of the pupil, (2) the concerns of the parents for enhancing the education of the pupil, (3) the results of the initial assessment or most recent assessment of the pupil, and (4) the academic, developmental, and functional needs of the child. (Ed. Code, § 56341.1, subd. (a).)

18. When recommending placement for home instruction for a pupil with exceptional needs, the IEP team *shall* have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the

pupil from attending a less restrictive placement. (Cal. Code Regs., tit. 5, § 3051.4, subd (d) (Section 3051.4(d)) (emphasis added).) The report *shall* include a projected calendar date for the pupil's return to school. (*Id.* (emphasis added).) The IEP team shall meet to reconsider the IEP prior to the projected calendar date for the pupil's return to school. (*Id*.)

19. In determining placement, school districts must ensure, to the maximum extent appropriate: (1) that children with disabilities are educated with non-disabled peers; and (2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. 300.114 (a); Ed. Code, § 56031.) The continuum of program options available for special education students includes all, or any combination, of the following, *in descending order of restrictiveness*: (a) regular education programs; (b) a resource specialist program; (c) designated instructional services; (d) special day classes; (e) nonpublic, nonsectarian school services; (f) state special schools; (g) instruction in nonclassroom settings; (h) itinerant instruction; (i) instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions. (34 C.F.R. § 300.115 (emphasis added); Ed. Code §§ 56360, 56361.) In-home placement is one of the most restrictive placements.

20. Although development of an IEP is a team decision, if the team members do not agree, it is the school district that is ultimately responsible for ensuring that a student is offered a FAPE. (*Letter to Richards*, 55 IDELR 107 (OSEP 2010). It is the school district that has an affirmative duty to review and revise, at least annually, an eligible child's IEP. (*Anchorage School District v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055 (*Anchorage*); 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a).) Nothing in the IDEA makes these duties contingent upon parental cooperation with, or acquiescence in, the district's preferred course of action. (*Anchorage, supra*, at 680 F.3d at p. 1055.) School districts "cannot excuse their failure to satisfy the IDEA's procedural requirements by blaming the parents." (*Id.*, citing *W.G. v. Board of Trustees of Target Range School District, No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485.)

21. When interpreting the meaning of a statute the primary goal is to determine and effectuate the Legislature's intent. (*In re Marriage of Bonds* (2000) 24 Cal.4th 1, 15.) To ascertain this intent, a judge must look first to the words used in the statute, giving them their usual and ordinary meaning. (*Trope v. Katz* (1995) 11 Cal.4th 274, 280; *In re Marriage of Hobdy* (2004) 123 Cal.App.4th 360, 366 ["Under the so-called 'plain meaning' rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning."].) The Legislature is presumed to have meant exactly what it said. (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1081.) Only when the words of a statute are inherently ambiguous or there appears to be some other reason to depart from the plain meaning rule (i.e. when using the plain meaning rule would lead to absurd results) will we look to other indicia of legislative intent. (*Robertson v. Health Net of California, Inc.* (2005) 132 Cal.App.4th 1419, 1426; *Wilcox v. Birtwhistle (*1999) 21 Cal.4th 973, 978.)

22. The IDEA seeks to ensure that disabled students are educated to the maximum extent appropriate with nondisabled peers, and separate schooling is disfavored unless the nature or severity of the disability cannot be satisfactorily accommodated in a less restrictive environment. Therefore, it is unsurprising that California regulations implementing the IDEA require that a pupil with exceptional needs not be sequestered in a home placement unless certain stringent criteria are met. The express language of Section 3051.4, subdivision (d) mandates that "[w]hen recommending placement for home instruction, the IEP team *shall* have in the assessment information a ... report of the psychologist ... stating the diagnosed condition and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement. The report *shall* include a projected calendar date for the pupil's return to school." (Cal. Code Regs., tit. 5, § 3051.4, subd. (d))(emphasis added).) The plain meaning of the word "shall" is that a party must, or is obliged to do some act. (*People v. Reiley* (1997) 192 Cal.App.3d 1487, 1489; see also Ed. Code, § 75 ["'Shall' is mandatory"].) OAH has consistently held that the requirements of Section 3051.4, subdivision (d) are mandatory. (See *Student v. Manteca Unified School District* (Nov. 4, 2013) Cal.Off.Admin.Hrngs. Case Nos. 2013080296/2013050805 [school district not required to offer home hospital instruction because parent failed to provide school district with medical report from the student's treating physician containing the requisite information regarding a diagnosed condition along with a projected date for return to school]; *Student v. Cupertino Union School District* (July 15, 2013) Cal.Off.Admin.Hrngs. Case Nos. 2013040122/2013030785 [student not eligible for home hospital instruction because parent did not provide medical report with diagnosed condition]; *Parent on behalf of Student v. Etiwanda School District* (Mar. 14, 2012) Cal.Off.Admin.Hrngs. Case No. 2011081122 [medical report required by Section 3051.4(d) is mandatory]; *Parent on behalf of Student v. Los Angeles Unified School District* (May 20, 2010) Cal.Off.Admin.Hrngs. Case No. 2010010587 [failure to provide projected return date justified school district's refusal to recommend home hospital instruction]; *Parent on behalf of Student v. Torrance Unified School District* (Aug. 25, 2008) Cal.Off.Admin.Hrngs. Case No. 2008040111 [doctor's letter that did not contain a diagnosis insufficient].) The assessment information provisions of Section 3051.4, subdivision (d) are mandatory, and District properly required that Parent provide the information delineated in that regulation before the IEP team could recommend that Student be placed on home instruction.

23. The weight of the evidence established that Parent was timely informed of the information required for an in-home placement, that is, a medical report from Student's psychologist (i) stating the diagnosed condition, (ii) certifying that the severity of the condition prevented Student from attending a less restrictive environment, and (iii) a projected calendar date for Student's return to school. Parent was given the materials packet and explanations twice, at the February 14, 2014 IEP team meeting and in Ms. Mabry's letter. Both Ms. Mabry and Ms. Gordon offered to assist Parent, and Ms. Gordon made attempts prior to the March 20, 2014 IEP team meeting regarding Parent's incomplete information. Prior to the February 14, 2014 IEP team meeting, the reasons given by Parent for keeping Student home from school were safety concerns involving adults in the classroom, injuries excused by a physician's note, and the need for Parent to obtain Student's educational records prior to an IEP team meeting. District acted promptly to provide Parent

with the information necessary to request home hospital instruction as soon as Parent indicated that Student had a medical condition that might warrant a temporary home placement. According to Student's home hospital request, Student was not diagnosed with a physical/mental/emotional disability until February 17, 2014, three days after District provided Parent with the materials and information on requesting home hospital instruction.

24. The weight of the evidence also failed to establish that Parent's confusion over the requirements for requesting in-home instruction was reasonable. Ms. Gordon explained the requirements to Parent when the materials were presented to her at the February 14, 2014 IEP team meeting. Ms. Mabry's February 18, 2014 letter repeated that, because Student had an IEP, *in addition* to the home hospital request, California regulations required that Student's physician provide a written statement that denoted "the diagnosed condition and certified that the severity of the condition prevented the pupil from attending a less restrictive placement." Ms. Gordon and Ms. Mabry both offered to answer any questions regarding Student's home hospital request. If Parent had a question regarding whether and which documents referenced in Ms. Mabry's letter were actually required or merely optional, Parent could have contacted Ms. Mabry, but she did not. Instead, Parent chose to ignore the content of Ms. Mabry's letter and to forego completing most of the documents contained in the home hospital request packet. Ms. Gordon attempted to contact Parent prior to March 20, 2014 to offer assistance, and Parent did not return Ms. Gordon's calls to seek clarification or guidance. Parent was in communication with Ms. Powell regarding homework, but did not ask her for guidance or a referral to someone knowledgeable. Parent did not recall if she discussed Ms. Mabry's letter with Student's counsel or advocate, and did not recall if she showed it to Mr. Bright. Parent's consistent lack of recall regarding her actions to gather information, her dismissal of the IEP team's attempts to explain regulatory requirements as "jibber jabber," and her characterization of the IEP team's attempts to provide alternative methods of complying with Section 3051.4, subdivision (d) during the March 20, 2014 IEP team meeting as "bullying," collectively demonstrate a disregard of the information provided that goes beyond mere inattention or lack of understanding. In addition, no later than March 3, 2014, Parent had retained experienced special education counsel in this matter. Counsel's knowledge of the law, including the requirements of Section 3051.4, subdivision (d), for in-home instruction, is imputed to the client. (See *Laukkare v. Abramson* (1035) 9 Cal.App.2d 447, 449.) The evidence of Parent's disregard for the information provided, and her failure to seek clarification or assistance from District staff or Mr. Bright, evince an ignorance of Parent's own choosing and demonstrate that her confusion, if any, was unreasonable.

25. The weight of the evidence did not establish that District required more information than mandated by Section 3051.4, subdivision (d), that is, a release of medical information. Although Parent had a deep distrust of District, and testified credibly that she was not comfortable executing a blanket release of medical information because Student's medical information was confidential, her testimony that District IEP team members were attempting to "bully" her into signing such a release as a condition of consideration of offering home hospital instruction was uncorroborated and unpersuasive. District IEP team members testified convincingly, and an audiotape excerpt of the IEP team meeting

corroborated, that Parent was informed during the March 20, 2014 IEP team meeting that she was not required to execute a release of medical information as part of the process of seeking home hospital instruction. The team's offer to have Ms. Mabry contact Mr. Bright, or to have Mr. Bright participate in the IEP team meeting, was made as a courtesy to assist Parent in gathering the requisite information for the IEP team's immediate consideration. The weight of the evidence also established that Parent was not required to complete a medications or special considerations form. The March 20, 2014 District IEP team members made clear to Parent that those forms were optional, in the event Parent or a physician wanted the IEP team to have additional information about a student's disabling medical condition when developing an educational program.

26. The weight of the evidence did not establish that District required less information than mandated by Section 3051.4, subdivision (d), that is, that District replaced Section 3051.4, subdivision (d), with its own lesser standard. Student contends that District created a home hospital request form that, by its own terms, (i) could be signed by any mental health professional, and not only a psychologist, (ii) sought only a date of diagnosis, not the diagnosis itself, and (iii) required only a verification that the disabling condition necessitated home hospital instruction, thereby dispensing with the assessment information requirements of Section 3051.4, subdivision (d). This argument fails for several reasons. First, as discussed at Legal Conclusion 23, above, District *did* require Parent to submit more than the home hospital request, and timely notified Parent of the additional information needed. Second, Ms. Gordon explained persuasively at hearing, and would have explained to Parent prior to March 20, 2014 if asked, that although the home hospital request was sufficient to implement a change of placement for *general education* students due to a temporary medical condition, a change of placement to in-home instruction and services for special education students had to be made by an IEP team and take into account more information than provided by that form. District's inclusion of the general education form in the materials provided to Parent did not evince an intention by District to dispense with or circumvent the requirements of Section 3051.4, subdivision (d). Third, the requirements of Section 3051.4, subdivision (d) are mandatory, and as admonished in *Anchorage*, District cannot excuse itself from compliance with obligations imposed by the IDEA due to Parent's lack of cooperation. A school district that fails to comply with the IDEA, or State regulations implementing the IDEA, may subsequently be found liable for failure to provide a FAPE, even if the parents requested and consented to the program offered. (See *J.W. v. Fresno Unified School District, supra*, 626 F.3d at pp. 446-451 [school district changed its placement offer to a program demanded by the parents, who were subsequently permitted to seek a due process hearing on the ground that the parents' preferred program did not offer Student a FAPE].)

27. Any delay in obtaining individualized in-home instruction for Student was of Parent's own making. District arranged to convene an IEP team meeting within days of the alleged aide incident, but Parent chose not to attend that meeting. In her letter of January 20, 2014, Parent requested that the meeting not be rescheduled until after Parent received a copy of Student's educational records, which was a reasonable exercise of her parental rights but also demonstrated a lack of urgency. Parent submitted a doctor's note to

District on January 21, 2014 that excused Student's attendance for unidentified injuries and did not mention or place District on notice that Student might need a change of program due to an acute health problem or a disabling mental condition. Parent allocated less than an hour of her time to the February 14, 2014 IEP team meeting, although the meeting was an annual review and required an in-depth review of her child's program. Mr. Bright completed the home hospital request for Student on February 17, 2014, and no evidence was presented on why Parent waited until March 5, 2014 to fax that request to District. Parent did not contact anyone at the District prior to the March 20, 2014 meeting to tell them that she had decided not to provide all of the information requested. Parent declined suggestions to have Mr. Bright join the March 20, 2014 IEP team telephonically, or to have Ms. Mabry contact Mr. Bright by telephone in a private room with Parent and Student's advocate on the line. Student's advocate requested that the meeting be adjourned and reconvened at a later date so that Parent could obtain the necessary information to support a recommendation for home hospital instruction. The weight of the evidence demonstrated that Parent, and not District staff, was responsible for the delays in providing the IEP team with the information required to consider in-home instruction for Student.

28. Student's advocate requested that the March 20, 2014 IEP team meeting be postponed, to give Parent an opportunity to gather the information required by Section 3051.4, subdivision (d) before a placement offer was made. The District IEP team members reasonably expected that the meeting would reconvene within a few days, and that an appropriate placement offer could be made after assessment information supporting Student's home hospital request was obtained and reviewed. The weight of the evidence established that the postponement was intended for only a matter of days and done in response to a reasonable parental request. Therefore, the failure to make an offer of placement at the March 20, 2014 IEP team meeting did not impede Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision making process, or caused a deprivation of educational benefits, and Student was not denied a FAPE on this ground.

29. In sum, the weight of the evidence established that Parent was timely informed of the information required by Section 3051.4, subdivision (d), but chose to provide only a portion of that information. The weight of the evidence also established that District required no more and no less information than mandated by Section 3051.4, subdivision (d). Therefore, Student did not meet his burden of proving by a preponderance of the evidence that he was denied a FAPE due to District delay in notifying Parent of the information required to support a home hospital request.

Issue 1(c) – Whether Offer of Home Hospital Instruction Required

30. Student contends that his post-traumatic stress disorder required a change in program to individualized services and in-home placement, and that District denied Student a FAPE by failing to offer such services and placement at the March 20, 2014 IEP team meeting. District disagrees, and contends that Student failed to provide the IEP team with sufficient information to warrant a recommendation for individualized in-home instruction.

31. An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrman*) .)

32. Here, the weight of the evidence did not demonstrate that, on or prior to March 20, 2014, Student required an in-home placement during his treatment for post-traumatic stress disorder. Student did not contend that he required different goals, instruction or services due to his medical condition, only that the March 20, 2014 IEP team should have offered him instruction and services in the home. Parent testified that Student suffered with post-traumatic stress disorder after the aide incident, but she is not a psychologist or otherwise qualified to make a diagnosis. Student did not call a treating mental health professional to testify to the nature of Student's post-traumatic stress disorder or how that disorder manifested in the educational environment. No evidence was presented that the nurse who completed Student's home health request, Mr. Bright, was qualified to diagnose mental health disorders, was familiar with Student, or had sufficient knowledge, education and experience to render an opinion on the impact of post-traumatic stress disorder on Student's education. Even had Mr. Bright had been qualified to render such an opinion, he did not testify at hearing, and his signature on a form with pre-printed language that an unidentified "physical/mental/ emotional disability" prevented Student from attending "regular" classes fell far short of establishing that Student had post-traumatic stress disorder and could not be educated in a setting other than the home during treatment.

33. Parent's statements to District that Student came home terrified after the incident with Ms. Powell's aide was insufficient to establish that Student required a change of placement, for medical reasons or otherwise. Parent refused to return Student to Ms. Powell's classroom, regardless of whether the aide was present or not, and no credible evidence was presented that Student was afraid of school, Ms. Powell's classroom, or any adult other than the aide. The evidence that Student was afraid of Ms. Powell's aide was scant, as Parent's testimony on this topic appeared to be based primarily on second-hand information regarding an incident that she did not witness. Ms. Powell, Mr. Dillingham and Ms. Thampi described Student before the incident as happy to be at school, excited to meet new peers, willing to follow directions, and eager to participate, and Mr. Black and Ms. Schamblin similarly described Student after the incident as eager to learn and making good progress. There was no evidence that Student was resistant to interacting with new adults during instruction as a result of the alleged incident or alleged post-traumatic stress disorder. Parent's January 20, 2014 letter expressed a willingness to consider retuning Student to Ms. Powell's classroom if the aide was removed, and to another site and classroom if cameras were installed, suggesting that Student's anxiety was specific to Ms. Powell's aide, and not to the school setting in general, or to McAuliffe or Ms. Powell's classroom in particular. Student's anxiety regarding interactions with one adult aide, without more, did not support a change of placement to individualized in-home instruction.

34. Even if Student had demonstrated that he actually had post-traumatic stress disorder, the weight of the evidence did not establish that an in-home placement was necessary to meet Student's unique educational needs during his treatment. Mr. Dillingham was qualified to work with students with anxiety-based disorders, and could have could have assisted in educational placement and program planning that met Student's needs in a less restrictive environment than the home. Student was making good progress under his February 15, 2013 IEP, particularly in the area of behavior, before Parent removed him from school. The February 14, 2014 IEP team identified academic, communication and behavior needs, some of which, such as developing social skills, required interaction with peers. Student also needed to learn to transition appropriately from preferred to non-preferred tasks in the classroom and on the playground, and benefitted from observing and modeling the good behavior of his peers, which modeling is available in the school setting but not at home. Parent herself observed regression in Student's social skills and behavior after he was removed from school, and that Student needed structure and routine. District IEP team members testified that there were a variety of service and placement options available that would address Student's needs, ranging from a return to Ms. Powell's room with accommodations such as another aide, a change in school site, a half day schedule or in-home instruction, among others. The evidence did not show that Student's unique educational needs during his treatment for post-traumatic stress disorder could only be met in the home setting. This analysis might have been different had Student provided the information required by Section 3051.4, subdivision (d), but as of March 20, 2014, he had not.[7]

35. Finally, as discussed at length in Issue 1(b), even had Student shown at hearing that he required a temporary in-home placement, the weight of the evidence established that Student had failed to provide District with the information mandated by Section 3051.4, subdivision (d), at the time of the March 20, 2014 IEP team meeting, such that the team could not have reasonably made such a recommendation at that time.

36. Student failed to meet his burden of establishing by a preponderance of the evidence that, in light of the evidence available to the March 20, 2014 IEP team, Student's alleged post-traumatic stress disorder required a change in program to individualized instruction in the home, or that District's failure to offer Student such services and placement on March 20, 2014 denied Student a FAPE.

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[7] Student's complaint challenges only District's failure to offer individualized in-home instruction due to Student's emotional health needs, and Student did not put on evidence of Student's other educational program needs. As Student did not establish that his medical condition required individualized in-home instruction as of March 20, 2014, no further analysis of the least restrictive environment in which all of Student's educational needs could have been met is necessary for purposes of this Decision.

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District prevailed on all issues presented.

RIGHT TO APPEAL THIS DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h). Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

Dated: October 9, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings